

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/15/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000447

FILED: _____

STATE OF ARIZONA

COLLIN YU

v.

FERNANDO A CELAYA

ALEX D GONZALEZ

CHANDLER CITY-MUNICIPAL COURT
FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC

MINUTE ENTRY

CHANDLER CITY COURT

Cit. No. 128840

Charge: SHOPLIFTING

DOB: 09/02/60

DOC: 02/23/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument on April 15, 2002. This Court has considered and

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/15/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000447

reviewed the record of the proceedings from the Chandler City Court, the exhibits made of record and the Memoranda submitted.

The only issue raised by the Appellant concerns his allegation that the trial judge erred in denying his Motion to Suppress. Appellant had filed a Motion to Suppress on October 2, 2000 and the State filed a response to that motion within a timely manner. Both parties agreed that an evidentiary hearing would not be necessary as the parties essentially agreed upon the facts. The only issue presented to the trial judge, then, was a question of law. Specifically, Appellant claimed an expectation of privacy in two boxes seized and searched without a warrant. The parties have also stipulated that the trial court denied the Motion to Suppress immediately prior to trial in this case. This Court has accepted that stipulation as an addendum to the record on appeal.

This Court must review this case *de novo* since Appellant's claim involves an alleged violation of his Fourth Amendment constitutional right to be free from unreasonable searches and seizures.¹

The facts of this case are not in dispute and were summarized well by both counsel in their appellate memoranda. Those memoranda reveal that Appellant was an employee of Sam's Club who was suspected of stealing from the store. Appellant's scheme involved removing expensive electronic equipment from the manufacturer's box and placing those expensive electronic items into another box of a much less expensive item (storage cubes), sealing the boxes up, and then taking the boxes to the cashier and paying only for the much less expensive items (the storage cubes), even though concealed within that box was an electronic device such as a T.V./VCR combination. On February 23, 2000, Sam's Club security summoned Officer Jacquin of the Chandler Police Dept. to report on their investigation. The security and police conducted surveillance on Appellant while he worked and

¹ State v. Gonzalez-Gutierrez, 187 Ariz. 116, 927 P.2d 776 (1996); Ramirez v. Health Partners of Southern Arizona, 193 Ariz. 325, 972 P.2d 658 (App. 1998).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/15/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000447

observed indications that he had concealed a T.V./VCR combination unit into a storage cube box, then sealed the box. After Appellant's night-shift was completed, Appellant returned to Sam's Club and purchased two boxes containing the storage cubes and including the box that had been resealed and contained a T.V./VCR combination. Appellant then paid only for the storage cubes. Appellant was stopped outside the store and escorted back inside. Officer Jacquin placed the Appellant under arrest, seized the two boxes, photographed and fingerprinted the boxes, then instructed another officer to assist him in opening them. At no time did the police obtain a search warrant or Appellant's consent to open the sealed boxes. Upon opening the sealed boxes, the police and store security discovered property which had been concealed inside and not paid for by Appellant.

The Fourth Amendment to the United State's Constitution protects against all unreasonable searches and seizures.² Searches conducted without prior judicial approval are per se unreasonable, subject only to a few well established exceptions to the warrant requirement.³ The State concedes, and this Court agrees, that several of the exceptions to the warrant requirement do not apply in this case as the search was not conducted incident to a lawful arrest, nor was the search an inventory of property that has come into the police possession.⁴ Appellee challenges Appellant's legitimate expectations of privacy in the boxes which were searched. Citing State v. Harding⁵ and State v. Schad⁶, Appellee argues that a thief has no legitimate expectations to privacy in the goods which were stolen. However, Appellee's argument must fail for the reason that Appellant in this case did purchase the two boxes containing the storage cubes. Storage cubes were actually within those boxes. That property was lawfully acquired by

² Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978).

³ Id.

⁴ Appellee's Memorandum at page 3.

⁵ 137 Ariz. 278, 670 P.2d 383 (1983).

⁶ 129 Ariz. 557, 633 P.2d 366 (1972).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/15/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000447

Appellant. Appellant was the lawful owner of the boxes and the storage cubes. This Court must conclude that Appellant did indeed possess a lawful and reasonable expectation of privacy in the sealed boxes that he purchased from Sam's Club.

This Court further concludes that a search warrant was required before the boxes purchased by Appellant could be opened by the police. This Court further concludes, as a matter of law, that the trial judge erred in denying Appellant's Motion to Suppress.

IT IS THEREFORE ORDERED reversing the Chandler City Court's order denying Appellant's Motion to Suppress.

IT IS FURTHER ORDERED reversing the judgment of guilt and sentence imposed in this case.

IT IS FURTHER ORDERED remanding this matter back to the Chandler City Court with instructions to enter an order granting Appellant's Motion to Suppress and for all further and future proceedings in this case.